BOOK REVIEWS.

A TREATISE ON THE LAW OF WILLS. By James Schouler, LL. D., Professor at Boston University Law School. Third Edition. Boston: Boston Book Company. pp. lxvi, 759.

The third edition of Professor Schouler's Treatise on Wills will be found useful chiefly for the reason that it contains references to recent English and American cases. It would be more useful if it contained more such references and fewer to text writers. The principal criticism of it is that it is frequently marred by vagueness of statement, and that often there is no successful attempt to reconcile decisions, which are discussed as conflicting, but which in the main are only apparently so because of the loose and inaccurate expressions contained in opinions. For instance, in discussing proofs of testamentary capacity (§ 172), the author state that there are two rules as to the burden of proof, the first being that the general burden of establishing capacity is upon the proponent, and the second being that there is no presumption that every adult is *compos mentis*, and that, consequently, the party who alleges insanity has the burden of establishing it. An examination of the cases will show that the conflict between these two so-called principles is more apparent than real, and that in a majority of cases that seem to conflict, the confusion comes from using the phrase "burden of proof" in two senses, one being the burden of proof on the whole case, and the other being merely the burden of going forward with the evidence. It is true that there is a presumption that an adult is normal and therefore of sound mind, so that in some jurisdictions the proponent of the will is not in the first place obliged to give evidence of capacity, but if the contestant has given such evidence of insanity that the jury cannot say that by the preponderance of evidence the testator had a sound and disposing mind and memory their verdict should be for the contestant. In this case the contestant has not proved insanity, but has merely prevented the proponent from proving capacity. The author in stating the English rule, says (§ 173) that if a party impeaches a will on account of insanity he must "establish such insanity by clear and satisfactory proof," and yet in the same section says that "still the *onus probandi* lies in every case on the party alleging a will, and he must satisfy the jury that it is the will of a capable testator." Although if one reads all that the author has to say on the subject, the true rule may be seen, yet statements like this are confusing. Another fault seems to be a failure carefully to define the meaning of "presumption" when used. There are many rules which the ecclesiastical courts laid down for their own guidance, which are mere inferences drawn from a given state of facts, they being the judges of both the law and the facts.

Such so-called presumptions are not legal rules at all, but would only be so much evidence for the jury in the particular case.

The author, in §§ 17 and 18, speaks of the "will of the state" as being sometimes in conflict with the "will of the individual," and gives several instances where they conflict, one of them being where the will is procured by fraud or undue influence, and the other where there is a revocation by change of circumstances. There is hardly a conflict here, as theoretically in the first case the paper does not represent the real "will," and in the other there is a "tacit condition" attached to the will.

That part of the work treating of the formal requisites of a will, and of revocation, alteration and republication, appear to be more satisfactory. This part would be helped by a consecutive discussion of the history of English legislation respecting wills, as our own statutes are similar to the Statute of Frauds or the present English Wills Act.

The index does not refer to "incorporation by reference," and it is not properly included under "republication," which treats of the case where a codicil revives a testamentary instrument, while papers not of a testamentary character may be incorporated in a will by proper reference.

The work, if used judiciously, will be helpful to the practicing lawyer, both for its citations and the many practical suggestions contained in it.

THE LAW OF BILLS, NOTES AND CHEQUES. By Melville M. Bigelow. Second Edition. Boston: Little, Brown & Company, 1900. pp. xxix, 349.

It would be difficult to overstate the claims of this modest-sized volume. To begin with, the author had thoroughly mastered his subject before he undertook the task of presenting it to the public in this form. Nearly thirty years ago, collaborating with Isaac F. Redfield, he published a valuable collection of leading cases on negotiable paper. Recasting the work ten years later, Mr. Bigelow followed it up with the first edition of this text in 1893, and with a new collection of cases in 1894.

In the second place, the author is not addicted either to copying or to cribbing. He thinks for himself. The conception of a subject which he presents is his own. At the same time, he does not strain after originality and he does not theorize unduly. Nor does he cite cases in support of a rule which he thinks ought to exist, simply because their outcome accords with such a rule. He knows his cases; his apprehension of the views formulated by the judges in their opinions is clear and accurate, and his statement of their reasoning as well as of their conclusions is trustworthy.

Especially well done is the opening chapter of this edition, which deals with the relation of the law prevalent to the topic of negotiable paper, and with the doctrine of consideration. Upon the latter subject, his conclusions are as follows:

"By the common law, the plaintiff in a suit on a simple contract in writing is bound to give some actual evidence of consideration; pro-